IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

Crl.Rev.Pet.No. 1746 of 2003()

CRA.29/2002 of I ADDL.SESSIONS COURT, ERNAKULAM
CC.584/1998 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY

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REVN. PETITIONER: APPELLANT/ACCUSED

SUNNY, S/O.VARGHESE,
ELENGANAMATTATHIL, VEETTIL,
NELLATTUKAR, MAZHUVANNOOR VILLAGE.

BY ADV. SRI.T.A.UNNIKRISHNAN

RESPONDENTS: RESPONDENT/RESPONDENT

THE STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.R.P.No.1746 of 2003-D

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Dated this the 1st day of November, 2007

O R D E R

The revision petitioner is the accused in C.C.No.584/1998 who stands convicted for the offences under Sections 279, 338 and 304A of the Indian Penal Code and sentenced to undergo simple imprisonment for one month under Section 279 I.P.C and simple imprisonment for six months for the offence under Section 304A I.P.C and sentenced to pay a fine of Rs.1,000/- for the offence under Section 338 I.P.C and sentenced to pay a fine of Rs.250/- for the offence under Section 134(a) read with Section 187 of the Motor Vehicles Act. The default sentence of the fine amount is to undergo simple imprisonment for one month and 15 days respectively. The driving licence was suspended for one month.

2. The prosecution case is that on 05/04/1998 at about 12.15 p.m the accused drove jeep bearing Registration No.KBF 4046 in a rash and negligent manner so as to endanger human life along the Kakkanad-Kumarapuram public road from west to east and collided with a motorcycle bearing Registration No. KL.8380 driven by the husband of PW.7 who died in the accident and PW.7 was the pillion rider and that she sustained fracture of the hip bone.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 17 and Exts.P1 to P12. PWs.1, 2, 4, 5 and 6 the independent occurrence witnesses did not support the prosecution and was treated as hostile. The evidence in support of the prosecution version consisted of the testimony of PW.7, the wife of the deceased who has rendered Ext.P2 F.I.S from the Medical Trust Hospital, Ernakulam. She has testified that the jeep came through the wrong side and hit on the bike driven by her husband. She has also testified as to the identity of the accused and also as to the fact that the jeep was driven in a high speed and totally in a negligent manner. It is her version that the travellers in the jeep were in a carefree manner and were singing songs etc. She noted the jeep from at a distance of 20 feet. She has stated that she could recollect the faces of the driver and two passengers sitting in the front seat. It is the contention of the counsel for the revision petitioner that it is unlikely that she could identify the driver as she was the pillion rider and after sustaining serious injuries in the incident. It is pointed out that she could not even remember the identity of the vehicle in which she was taken to the hospital. The jeep driver did not stop the vehicle and drove away. It was stated that the owner of the jeep was not examined and the same is fatal to the prosecution. PW.7 has asserted

that she could identify the driver of the vehicle. The first information statement also contains the recital that she can identify the driver. PW.17 the investigating officer has stated that PW.7 has stated that she can identify the vehicle. Of course there is a contradiction as PW.17 has stated that PW.7 has identified the driver at the police station but PW.7 has denied the same. It is also to be noted that the witnesses were examined after about two years of the date of the incident and hence certain inconsequential discrepancies are probable. There is no reason to disbelieve the version of PW.7 as it cannot be ruled out that a person can identify the driver in such a situation as the faculty of each individual vary. In the circumstances I find that the evidence of PW.7 that has been accepted by both the courts below is not to be ignored. Hence, I find that the identity of the accused stands proved from the evidence of PW.7 and that of the investigating officer PW.17. It is seen from the scene mahazar and as noted by both the courts below that the scene of occurrence is on the extreme wrong side of the jeep. The fact that the independent witnesses and the person who showed the scene of occurrence to PW.17 turned hostile cannot be the sole reason to reject the prosecution version. In the circumstances and in view of the concurrent findings of the courts below I find that the conviction of the

accused for the offences under Sections 279, 338 and 304A I.P.C and Section 134(a) read with Section 187 of the M.V. Act is only to be sustained and the same is confirmed.

4. So far as the sentence is concerned, the counsel for the revision petitioner has pleaded for leniency pointing out that about nine years have elapsed since the commencement of the proceedings and so far the accused was facing the ordeal of the criminal proceedings. It is also pointed out that the petitioner is too poor and his family is solely depending on his earnings for their livelihood. In the circumstances and considering the lapse of time the sentence imposed is liable to be modified. The sentence imposed for the offence under Section 304A I.P.C is modified to imprisonment till the rising of the court and to pay compensation of rupees twenty-five thousand to the legal representatives of the deceased and in default to undergo simple imprisonment for six months. The sentence imposed for the offence under Section 338 I.P.C is modified to imprisonment till the rising of the court and to pay compensation of rupees five thousand to PW.7. No separate sentence is awarded for the rest of the offences. The revision petitioner is granted four months time to remit the amount of

compensation. He shall appear before the Judicial Magistrate of the First Class, Kolenchery, on 01/03/2008 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

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